

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

In the matter of:)	DOCKET NO. S-03184A-03-0000
)	
ROBERT SHAKMAN)	ORDER TO CEASE AND DESIST AND
10249 E. Celtic Drive)	FOR OTHER RELIEF
Scottsdale, Arizona 85260)	
)	
HEALTHCARE PURCHASING ALLIANCE, INC.,)	DECISION NO. <u>66767</u>
7150 E. Camelback Road, Suite 300)	
Scottsdale, Arizona 85251,)	
)	
Respondents.)	

I.

INTRODUCTION

On October 20, 2003, the Securities Division (the “Division”) of the Arizona Corporation Commission (the “Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist (the “Notice”) against Robert Shakman (“SHAKMAN”) and Healthcare Purchasing Alliance, Inc. (“HPA”) alleging violations of the Arizona Securities Act (the “Act”). The Notice specified that SHAKMAN and HPA would be afforded an opportunity for an administrative hearing upon written request filed with the Commission’s Docket Control within ten (10) days after receipt of the Notice, in accordance with A.A.C. R14-4-306(B).

On October 20, 2003, the Division personally served a copy of the Notice on SHAKMAN at his place of residence. HPA was personally served by serving SHKAMAN, an officer of HPA on October 20, 2003. In addition, HPA was also personally served by serving Eric W. Kessler, Esq., the last known statutory

1 agent of HPA, at his business address. SHAKMAN and HPA failed to request an administrative hearing
2 within ten (10) days after receipt of the Notice.

3 On November 21, 2003, counsel for SHAKMAN filed a "Response of Robert Shakman"
4 ("Response") which contained admissions to some of the paragraphs of the Notice and general denials of
5 certain paragraphs of the Notice. The Response also stated that it was without sufficient information to form a
6 belief as to the accuracy of the remaining allegations contained in the Notice. SHAKMAN claimed that the
7 Notice should be barred under the theories of estoppel, laches and statutes of limitations. Furthermore,
8 SHAKMAN requested that the Notice be "denied and dismissed in its entirety." Neither Respondent filed a
9 request for a hearing.

10 On December 8, 2003, the Division filed its Response to the Respondents' request for a dismissal of
11 the Notice coupled with a Motion for Entry of Default. Respondents filed no reply.

12 On January 6, 2004, the Administrative Law Judge issued a Procedural Order granting the Division's
13 motion and denying SHAKMAN's request to dismiss the Notice. The Division was ordered to prepare a
14 recommended Default Order for submission to the Commission for its approval.

15 II.

16 FINDINGS OF FACT

17 1. Respondent ROBERT SHAKMAN ("SHAKMAN") was at all relevant times a resident of
18 Arizona, and the president, director and principal shareholder of Respondent HEALTHCARE
19 PURCHASING ALLIANCE, INC. Upon information and belief, SHAKMAN now resides in Scottsdale,
20 Arizona.

21 2. Respondent HEALTHCARE PURCHASING ALLIANCE, INC. ("HPA") was at all
22 relevant times an Arizona corporation with its principal place of business at 7150 E. Camelback Road, Suite
23 300, Scottsdale, Arizona 85251. HPA was administratively dissolved on or about January 10, 1997 for
24 failure to file annual reports.

25 3. SHAKMAN incorporated HPA in Arizona on or about November 4, 1993.

1 4. SHAKMAN described HPA as a “Group Purchasing Organization” created to provide group
2 buying power to its members. The members were to consist of individual and small group health care
3 practices, including physicians, osteopaths, dentists and veterinarians. HPA was to negotiate, on behalf of its
4 members, contracts with local and national companies for medical supplies and services.

5 5. According to an HPA offering document entitled, “Investment Opportunity for Health Care
6 Purchasing Alliance, Inc.,” HPA was offering six percent of its stock for the purpose of raising \$102,000.
7 HPA was to use the capital raised from the sale of its stock to finance expansion and meet its financial
8 obligations.

9 6. The offering document provides that investors would earn returns two ways: (i) increases in
10 the stock’s value; and (ii) annual profit distributions.

11 7. HPA’s offering document also stated that “investors should receive a 7-12% return during the
12 first year and be earning in the 20% rate at the end of the first year.”

13 8. According to a “Share Purchase Agreement,” dated January 18, 1994, SHAKMAN
14 owned 510 shares of common series “A” stock in HPA. Two other investors purchased a combined
15 490 shares of common series “B” stock in HPA.

16 9. Beginning in or about January 1994, SHAKMAN began soliciting, in and from Arizona,
17 prospective investors to purchase from him his HPA stock.

18 10. From approximately January 1994 to January 1995, HPA and SHAKMAN sold shares
19 of HPA stock to no less than fourteen investors, raising approximately \$86,830.

20 11. SHAKMAN, on behalf of HPA, also executed promissory notes (the “notes”) in favor
21 of at least two investors in exchange for a collective investment in HPA from the two investors of
22 \$42,500. In addition, SHAKMAN and HPA received loans from one investor totaling \$1, 780.

23 12. In connection with the offer and sale of HPA stock and the notes:

24 a) SHAKMAN and HPA represented to investors that the investments could be
25 refunded at any time with “no questions asked,” when in fact, SHAKMAN and
26

1 HPA denied certain investors' requests for refunds, while other investors have
2 been unable to contact SHAKMAN and HPA to request a refund.

3 b) SHAKMAN and HPA represented to investors that HPA stockholders would
4 begin receiving quarterly dividend checks in January 1995, when in fact, HPA
5 never paid dividends to the investors.

6 c) SHAKMAN guaranteed investors a twenty percent annual return on their
7 investment twenty-four months after making the investment, when in fact, the
8 investors have never received a return on their investments.

9 d) SHAKMAN and HPA overstated and otherwise misrepresented to investors
10 the number of members who enrolled in HPA's program.

11 e) SHAKMAN and HPA overstated and otherwise misrepresented to investors
12 the number and/or nature of HPA's contractual agreements with health care
13 suppliers and service providers.

14 f) SHAKMAN represented to investors that he was a doctor and licensed dentist,
15 when in fact, SHAKMAN was neither a doctor nor a licensed dentist.

16 g) SHAKMAN and HPA failed to provide to investors a balance sheet and/or
17 profit and loss statement reflecting HPA's financial condition and results of
18 operations.

19 h) SHAKMAN and HPA represented to investors that HPA was offering its
20 shares in compliance with state and federal securities laws, when in fact, the
21 offerings were not in compliance with applicable securities laws.

22 13. In or about April 1995, HPA vacated its offices and closed its business without notifying
23 its shareholders.

24 14. Shareholders have repeatedly attempted to contact HPA and SHAKMAN, but to no
25 avail.

26 15. None of the HPA investors have received a return on their investment.

III.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801 et seq., the Arizona Securities Act (the “Act”).

2. On October 20, 2003, the Division properly served the Notice on SHAKMAN and HPA in accordance with A.R.S. § 44-1972(D), A.A.C. R14-4-303 and R14-4-306.

3. SHAKMAN and HPA failed to request a hearing within the time limits prescribed in A.R.S. § 44-1972(D) and A.A.C. R14-4-306.

4. The HPA stock and the notes are securities within the meaning of A.R.S. § 44-1801(26).

5. SHAKMAN and HPA offered and sold HPA stock and the notes within or from Arizona within the meaning of A.R.S. § 44-1801(15) and (21).

6. The HPA stock and the notes were unregistered and non-exempt securities, in violation of A.R.S. § 44-1841.

7. SHAKMAN and HPA violated A.R.S. § 44-1842 by acting as dealers and/or salesmen without being registered in Arizona under Article 9 of the Act or exempt from registration.

8. SHAKMAN and HPA violated A.R.S. § 44-1991 in that they directly or indirectly, made untrue statements of material fact and omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made. SHAKMAN and HPA also engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors within the meaning of A.R.S. § 44-1991.

IV.

ORDER

THEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, the following Order is appropriate, in the public interest, and necessary for the protection of investors:

1 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that SHAKMAN and HPA, their agents,
2 servants, employees, successors, assigns and those persons in active concert or participation with them
3 CEASE AND DESIST from the following and any other violations of the Act:

4 1. Offering to sell or selling securities within or from Arizona unless the securities are
5 registered with the Commission pursuant to Articles 6 and 7 of the Act, or an exemption from
6 registration is applicable;

7 2. Offering to sell or selling securities within or from Arizona unless prior registration as a
8 dealer or salesman is obtained under Article 9 of the Act, or an exemption from registration is
9 applicable;

10 3. Offering to sell or selling securities within or from Arizona in violation of the antifraud
11 provisions of A.R.S. § 44-1991.

12 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that SHAKMAN and HPA,
13 jointly and severally, shall make monetary restitution according to this Order in the amount of \$131,110
14 to those investors shown on the records of the Division as purchasers of HPA stock and the notes. In
15 addition, SHKAMAN and HPA shall pay \$125,823 as interest, in the amount 10% per annum, from
16 the date of the investment to the date of this Order. One investor received a partial payment of \$3,000.
17 SHAKMAN and HPA owe restitution, plus interest, to investors in the amount of \$253,933.

18 IT IS FURTHER ORDERED that SHAKMAN and HPA shall pay interest at the legal rate on
19 all unpaid restitution accruing from the date of this Order, at the statutory rate of ten percent per annum
20 pursuant to A.A.C. R14-4-308, until the investors to whom they sold HPA stock and the notes are paid
21 in full. Restitution funds shall be paid to the Arizona Attorney General and shall be deposited in a trust
22 account with a federally insured financial institution.

23 The Arizona Attorney General shall disburse the available funds on a pro rata basis to those
24 investors to whom SHAKMAN and HPA sold HPA stock and the notes, as reflected in the records of
25 the Division. If any disbursement check issued by the Arizona Attorney General for restitution either is
26 not deliverable or has not cleared the trust account within ninety days of the date of issuance, the funds

related to such check shall be disbursed on a pro rata basis to the remaining investors. Once full restitution, including principal and interest, has been made to the investors, any remaining or additional funds shall revert to the State of Arizona payable to the Treasurer and credited toward the penalty amount of this Order, as set forth below.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that SHAKMAN and HPA, jointly and severally, shall pay an administrative penalty in the amount of \$20,000 by cash or check payable to the Treasurer of the State of Arizona for deposit into its general fund. The foregoing restitution and administrative penalty shall be paid immediately upon entry of this Order.

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Should collection become necessary, SHAKMAN and HPA, jointly and severally, shall be liable to the Commission for its costs of collection and interest at the statutory rate of ten percent per annum on all amounts not timely paid.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

<u>/s/ Marc Spitzer</u>	<u>William A. Mundell</u>	<u>Jeffrey Hatch-Miller</u>
CHAIRMAN	COMMISSIONER	COMMISSIONER

<u>Lowell Gleason</u>	<u>Kristin Mayes</u>
COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
Executive Secretary of the Arizona Corporation Commission,
have hereunto set my hand and caused the official seal of the

Commission to be affixed at the Capitol, in the City of
Phoenix, this 5th day of February, 2004.

/s/ Brian C. McNeil
BRIAN C. McNEIL
Executive Secretary

DISSENT

This document is available in alternative formats by contacting Yvonne L. McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail ymcfarlin@cc.state.az.us.